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**ADMITTED IN PENNSYLVANIA ONLY

February 5, 1993

VIA HAND DELIVERY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in MM Docket 92-266

Dear Ms. Searcy:

Pursuant to 47 C.F.R. § 1.1206, the undersigned submits this original and one copy of a letter disclosing an oral ex parte presentation.

On February 5, 1993, the undersigned and Lisa S. Gelb, of Miller & Holbrooke; Marilyn J. Fox and Jerold C. Lambert of the Financial Services Department of the City of Austin, Texas; Ed Delabarre, Assistant City Attorney of Austin, Texas; and William Cook of Arnold & Porter, met on behalf of a coalition of municipalities with Douglas W. Webbink. The meeting dealt with the municipalities' interests in the proceeding, subscribers' need for relief from monopoly pricing, the coalition's proposed model for cable rate regulation, and procedural issues.

Sincerely yours,

MILLER & HOLBROOKE

By
Joseph Van Eaton

JVE\tme
Enclosure(s)

cc: Douglas W. Webbink, Esq. (via Hand Delivery)

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EX PARTE OR LATE FILED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation	MM Docket No. 92-266

COMMENTS OF AUSTIN, TEXAS; DAYTON, OHIO; DUBUQUE, IOWA; GILLETTE, WYOMING; MONTGOMERY COUNTY, MARYLAND; ST. LOUIS, MISSOURI; AND WADSWORTH, OHIO

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January 27, 1993

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Summary of Argument

These comments are filed on behalf of Austin, Texas; Dayton, Ohio; Dubuque, Iowa; Gillette, Wyoming; Montgomery County, Maryland; St. Louis, Missouri; and Wadsworth, Ohio. Some of the members of the Coalition are large cities, and others are relatively small. However, all members of the Coalition are prepared to regulate rates, and will do so as long as the Federal Communications Commission ("Commission" or "FCC") adopts regulations that provide franchising authorities a genuine opportunity (both substantively and administratively) to prevent operators who do not face competition from overcharging subscribers.

The Coalition's overriding concern is that subscribers obtain the relief from monopoly cable rates that Congress

intended to provide when it enacted the Cable Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (to be codified in scattered sections of 47 U.S.C.) (the "Act" or "CPCA"). The amount of monopoly profits presently collected by cable operators has been estimated to be $6 billion per year. Congress has declared that the cable industry today does not face competition. Congress sought, through the rate regulation provisions of the Act, to eliminate unfair monopoly profits. To achieve this congressional mandate, existing rates must be reduced, both for basic and for non-basic or expanded basic tiers.[1]

The FCC should design a method for regulating rates that will eliminate the monopoly overcharges currently being imposed on subscribers. In the short term, this could be done by establishing a national benchmark per-channel price to evaluate the rates for services provided in communities that do not desire to conduct a full cost of service rate proceeding. We believe that a reasonable competitive rate for basic and non-basic services combined would be approximately $0.32 per-channel. This conclusion is based on examining (1) rates in competitive franchise areas; (2) actual costs in a cross-section of communities; and (3) other factors that suggest rates are 30-50

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[1] The terms "expanded basic" and "non-basic" are used throughout these comments to refer to cable programming services other than basic service, as defined in § 623(1)(2) of the CPCA, 106 Stat. at 1470-71, but not including programming offered on a per-channel or per-program basis. Per-channel or per-view programming is also referred to in these comments as "premium programming" or "pay service programming."

percent above competitive levels. Over the longer term, however, the Coalition believes that the FCC should move toward a regulatory method that allows certified localities or the FCC to establish basic rates, and the FCC to establish non-basic rates, based on the costs of providing cable service.

The FCC should determine norms of costs for providing cable service. These norms can be used in a relatively simple formula, and adjusted for unique local cost factors, to determine whether rates for basic and non-basic service are reasonable. The Coalition's approach would require the FCC to develop a uniform system of accounts. The approach is relatively easy to apply, because it relies on readily available public data and on a nationally uniform methodology. It should control against excessive, unjustified costs.[2] In addition, a community should be given the option of negotiating rates with cable operators, or to use actual costs (rather than cost norms) to set rates.

To achieve congressional goals, the Coalition believes the FCC's regulations should recognize the following:

The FCC should adopt regulations that impose rate regulation on all cable systems except where a system faces head-to-head competition from an alternative provider that offers service comparable to the programming offered on the operator's basic and expanded basic tiers. Effective competition exists only where

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[2] A detailed explanation and initial sample of the model is submitted as an exhibit to these comments as Att. 1. Our assumption is that the Commission will be able to develop cost data that does not contain a substantial monopoly component.

the dominant cable operator is forced to charge truly competitive rates.

The FCC should allow operators to offer multiple tiers of basic service and find this consistent with the anti-buy-through provisions of the Cable Act amendments. There is no need to encourage or allow operators to establish "stripped down" basic service tiers of broadcast and public, educational and governmental ("PEG") channels. This practice will lead to consumer dissatisfaction and evasion of basic rate regulation.

The FCC should facilitate local rate regulation in any cable community that is not subject to effective competition. To ensure subscribers obtain rate relief as soon as possible, the FCC should make the local rate certification process as simple as possible. The FCC need not conduct hearings and need not determine whether a community is subject to effective competition as part of the certification process. Instead, certification could quite literally be (and should be) effected by a single page filing, or even a post card.

The FCC rules must prevent cable industry practices designed to evade rate regulation. In particular, rate increases since October 5, 1992, the date Congress determined that existing rates were excessive, are indefensible. The Commission should roll back those rate increases. In addition, many cable operators have retiered services after the Act was enacted in an effort to avoid or minimize the impact of upcoming FCC rate regulations. This retiering should be reversed for purposes of determining

whether a service is subject to regulation as basic or non-basic service.

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These comments are filed on behalf of a Coalition of communities: Austin, Texas; Dayton, Ohio; Dubuque, Iowa; Gillette, Wyoming; Montgomery County, Maryland; St. Louis, Missouri; and Wadsworth, Ohio ("Coalition"). These comments respond to the Notice of Proposed Rulemaking ("NPRM") issued in this docket. Coalition members vary in size, but each is prepared to regulate cable subscriber rates, and believes effective cable rate regulation is necessary to protect consumers.

I. INTRODUCTION

The Federal Communication Commission ("FCC" or "Commission") draws three general conclusions: (1) traditional cost of service should not be the primary method for regulating rates; (2) the Commission should adopt a benchmark rate or formula for deriving a rate; and (3) the cable operator must be able to opt for cost-

of-service regulation to justify an above-benchmark rate. NPRM ¶ 1-2. The Commission seeks comments on this approach and asks whether regulation should be aimed at reducing existing rates, or merely limiting future increases in those rates. NPRM ¶ 3-4.

As a general matter, the Coalition believes the primary purpose of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (the "Act" or "CPCA") was to squeeze out monopoly rents from rates for basic cable service and for non-basic tiered cable services. To accomplish this goal, the Coalition believes the Commission must establish its rate regulations in two steps, to provide at least some immediate relief to consumers from monopolistic prices and ultimately to eliminate uncompetitive pricing from cable services. The first step requires reductions in the rates charged for basic and non-basic tiered services.[3] As a second step, the Commission should develop a cost-based formula to guide future rate regulation at the federal and local levels. Below, the Coalition outlines the statutory requirements for immediate rate reductions; identifies other goals appropriate for the new cable rate system; and offers a methodology that satisfies both immediate and longer-term goals of the statute.

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[3] The terms "expanded basic" and "non-basic" are used throughout these comments to refer to cable programming services other than basic service, as defined in CPCA § 623(l)(2), 106 Stat. at 1470-71, the Communications Act of 1934, as amended, but not including programming offered on a per-channel or per-program basis. Per-channel or per-view programming is also referred to in these comments as "premium programming" or "pay service".

The Coalition concludes that, as of April 3, 1993, the Commission should set a maximum rate per-channel for basic service at $0.32 and should rule that it will, upon complaint, examine non-basic tiered rates whenever the rates for those services effectively exceeds $0.32 per-channel.[4] Communities could adopt the Commission rate or instead choose to do a cost of service review, and set basic rates accordingly. The $0.32 per-channel rate would be used only as an interim approach, while the FCC collected cost data from systems. Ultimately, the FCC would use the cost data to establish cost-based norms for cable systems that could be used to derive both basic and non-basic rates. Again, a franchising authority would have the option of using actual costs to review and establish basic rates. These conclusions and the model proposed are based on a report prepared by Jay Smith and Michael Katz ("Smith & Katz"), which is included as Attachment 1 to these comments.

II. RECOMMENDED RATE SETTING MODEL AND APPROACH

A. Congress Has Directed the FCC to Eliminate Monopoly Rates from Subscriber Charges

1. The Context of the Congressional Action: Cable Is Charging Monopoly Rates.

Study after study -- including cable industry studies -- show that consumers are and have been significantly overcharged for basic cable service and for non-basic tiered service since

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[4] The method by which this interim benchmark rate was derived is described in detail in Att. 2.

the passage of the Cable Communications Policy Act of 1984, 47 U.S.C. § 541 et seq. ("Cable Act").

The nation's largest cable operator, Tele-Communications, Inc., sought to amortize the value of franchises acquired when it purchased cable systems. It convinced the United States Tax Court that it should not be required to attribute any of the value it ascribed to the franchise to "goodwill," because goodwill does not exist in a monopoly situation, and cable (it argued emphatically) is a monopoly. TeleCommunications, Inc. v. Commissioner, 95 T.C. 36 (Nov. 7, 1990). TCI even quantified the monopoly component for three franchises, suggesting that between 17-45 percent of the fair market value was attributable to the prospect of earning more than a normal rate of return.[5]

The Consumer Federation of America concluded that in a competitive market, cable rates would drop by half, saving consumers approximately $6 billion a year.[6] This conclusion is supported by an August 1991 report of the Department of Justice estimating that approximately 45-50 per cent per year of the rate increases in cable since 1984 are attributable to cable's market

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[5] Shew, William, National Economic Research Associates, Inc., "The Value of Three Cable TV Franchises," (November 30, 1989).

[6] Cable Television Regulation Hearings Before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce on H.R. 1303 and H.R. 2546, 102d Cong., 1st Sess. 699 (1991)(statement of Gene Kimmelman, Legislative Director of the Consumer Federation of America)("Hearings").

power.[7] See also Appendix A, Smith & Katz. It was in light of these studies, as well as survey and anecdotal data showing that cable rates had risen dramatically since rate deregulation, at a rate significantly above inflation rates, that Congress made the findings of undue cable market power in Section 2(a)(1)-(2) of the CPCA, 106 Stat. 1460, and adopted the regulatory scheme at issue here.

2. **The Statutory Mandate: Eliminate Monopoly Profits.**

"Subscribers in a deregulated marketplace are at the mercy of a cable operators' market power." S. Rep. No. 92, 102d Cong., 2d Sess. at 8 (1992), 1992 U.S.C.C.A.N 1133, 1140 ("Senate Report"). Congress devised a simple remedy for this ill: a regulatory scheme designed to eliminate monopoly profits from basic rates and from non-basic tiered rates.

a. Basic Rates

The parameters for the regulation of basic cable rates contemplated by the CPCA are explicitly prescribed by the Act itself. In setting rates for basic service the FCC's discretion is limited to adopting rate formulae that meet a dual test to (i) "ensure that the rates for basic service are reasonable" and (ii) "be designed to ... protect ... subscribers ... from rates ... that exceed the rates that would be charged ... if such cable

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[7] Robert Rubinovitz, Market Power & Price Increases for Basic Cable Service Since Deregulation, (U.S. Department of Justice, Antitrust Division, Economic Analysis Group, Aug. 6, 1991).

system were subject to effective competition." CPCA § 623(b)(1), 106 Stat. at 1465. Effect must be given to both (i) and (ii). Thus, the regulations must ensure reasonable rates, not to exceed competitive rates.[8] Any regulation that is not designed to set cable rates at the level they would be at if there were effective competition, as defined by Section 623(l)(1) of the CPCA, 106 Stat. at 1470, does not comply with point (ii) of the statute.[9]

b. Non-Basic Rates.

Congress set up a slightly different scheme with respect to rates for tiered, non-basic services, but the two schemes are complementary, not contradictory. The Commission is required to establish criteria that allow subscribers and franchising authorities to identify and object to non-basic tiered rates that appear "unreasonable." Upon challenge, the FCC must reduce rates that it finds are "unreasonable." CPCA § 623(c)(2), 106 Stat. at 1468-69. By definition, a rate is

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[8] Nothing in § 623(b)(2)(C), 106 Stat. at 1466, overrides § 3(b)(1), 106 Stat. at 1465, since § 623(b)(2) specifically requires that the FCC's regulations discharge its obligations under paragraph (1). In addition to the general requirement in § 623(b)(2) that the Commission's regulations "carry out its obligations under paragraph (1)," Section 623(b)(2)(C)(i), 106 Stat. at 1466, specifically requires ("shall") the Commission to take into account the rates for cable systems subject to effective competition.

[9] If, for example, in a competitive environment, operators would charge a nominal price for basic service (to encourage subscribers to take service from their system), then franchising authorities must be in a position to ensure that a similar rate is charged in their communities. This possibility is recognized in the legislative history. H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. 63 (1992), reprinted in 1992 U.S.C.C.A.N. 1231, 1245 ("House Conference Report").

"unreasonable" if it exceeds (or is below) the level required to attract investors; a monopoly rate is unreasonable.[10] The statute requires the Commission to prohibit and to prevent cable operators from charging prices above reasonable levels for tiered, non-basic service, as well as for basic service, and thus requires it to prohibit operators from earning unreasonable profits.[11]

c. Rollbacks

In light of the history of cable rate increases since 1986, and the record of cable's monopoly pricing power -- all reflected in the congressional findings and the legislative history of the Cable Act amendments -- rollbacks in rate levels are necessarily required to carry out the congressional directives described above, including Congress' instruction that rates for basic service not exceed those that would be offered under effective competition. CPCA § 623(b)(1), 106 Stat. at 1465.

Congress recognized that existing rates would have to be reduced in order to achieve its goal of protecting consumers from anticompetitive rates.[12] The Act contemplates rate

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[10] Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944); Bluefield Waterworks & Improvement Co. v. Public Ser. Comm'n of West Virginia, 262 U.S. 679 (1923). There is a "zone of reasonableness" which may satisfy this criterion.

[11] House Conference Report at 63, 1992 U.S.C.C.A.N. at 1245.

[12] Senate Report at 75, 1992 U.S.C.C.A.N. at 1208 (recognizing that rates prior to the passage of legislation may be unreasonable).

reductions, and places only one limitation on them: complaints regarding non-basic rates must be filed within a reasonable period, except during the 180-day period following implementation of FCC regulations. CPCA § 623(c)(3), 106 Stat. at 1469.

3. **Fair Prices and Cable Industry Viability.**

The Commission suggests it can ignore Congress' goals if the cable industry would suffer. The FCC asserts, generally, that it has authority to allow operators to charge more than the rate that would be charged if the cable system faced competition. NPRM ¶31-32. The Coalition disagrees. The Commission lacks authority to allow basic rates to be higher than competitive levels, because the specific language is mandatory ("shall"), in Section 623(b)(2) of the CPCA, 106 Stat. at 1465-66, discussed above. The FCC's suggested authority is dubious as well as to rates for non-basic services because language in Section 623(c)(2)(B) of the CPCA, 106 Stat. at 1469, directs that rates for cable systems in areas facing effective competition be considered in determining whether a rate is unreasonable. The Commission's suggestion is inappropriate public policy.

First, as explained above, the statute does not allow the Commission discretion to allow operators to retain monopoly profits. The policy choice has been made, and Congress has decided that monopoly profits should be eliminated. Congress designed the rate regulation provisions of the Act to protect subscribers, not cable operators.

Second, with effective rate regulation, the cable industry will remain economically healthy. No one is suggesting that reasonable profits should be eliminated. Monopoly profits, when reduced to a competitive level, leave competitive profits. Cable operators will remain financially healthy. They will have incentives to continue to provide services to existing customers, to enter new areas and/or to provide new services to generate additional and new profits. On the other hand, allowing cable operators to earn noncompetitive returns on monopoly services ignores fundamental principles of economics and misallocates the society's resources.

Instead, the Commission's working assumption should be the same as Congress's, that competitive rates are economically and socially beneficial. The regulations developed by the Commission must permit reductions in existing rates for regulated services where monopoly profits exist.

The Commission is rightly concerned that regulation not discourage necessary operator investment in capital or programming, but the key to this result is not in permitting continued monopoly profits. The answer is a regulatory scheme that fairly accounts for legitimate and necessary operator costs and allows a reasonable profit for providing quality service.

B. **Overview of Proposed Model for Regulation.**

The statute does not mandate cost-of-service for regulating basic rates. However, the Coalition believes that every community should have the authority to opt to use a cost-of-service methodology to regulate rates. The Coalition also believes that the Commission overestimates the difficulty of traditional cost-of-service regulation, and the ability of many cities to apply it. Austin, Texas, for example, regularly uses cost-of-service regulation to establish rates for regulated utilities (and for the City's municipally-owned electric system). Wadsworth, Ohio, a community of 15,700, has used cost-of-service methods to regulate cable television in the past, and currently uses cost-of-service regulation for all of its utilities. For communities that regularly apply cost-of-service methods, it may actually be easier to apply that method to cable television than to develop an entirely unique regulatory structure to apply to cable.

At the same time, the Coalition agrees with the Commission that many communities are not in a position to apply traditional cost-of-service regulation. The Coalition believes it is entirely appropriate for the Commission to develop a national model or formula based on an industry average cost schedule that can be used to determine combined basic and non-basic tier rates, looking to normal cable costs in setting rates. In the long run, a regulatory method based on costs will be responsive to changes in the industry and will yield reasonable compensation to the

industry. However, the Commission failed to seek any cost data in its information solicitation to the cable industry. Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Order, MM Dkt. No. 92-266 (released adopted December 23, 1992). As a result, the Commission cannot use national cost data to set rates on April 3, 1993. Faced with this reality, the Coalition believes that Commission regulatory methods should be established in two phases.

As of April 3, the Commission should adopt a benchmark rate of $0.32 per-channel for basic and for non-basic services. This rate seems reasonable based on estimates of existing monopoly profits in the industry, on actual cost data available to the Coalition members, and based on rate data from communities that are faced with effective competition.[13] At the same time, the Commission should immediately initiate a new rulemaking to gather data necessary to establish industry normative costs, which could then be used to establish future basic service rates, with relatively minor input at the local level, to reflect unique costs of providing service in a particular franchise area.

This approach makes unnecessary a general rule that an operator is permitted to opt for cost-of-service ratemaking at any point. As a constitutional matter, an operator is only entitled to an opportunity to earn a fair return on its used and useful investment; if an operator acts inefficiently, the

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[13] See Att. 2.

consumer need not pay the price. Federal Power Commission v. Hope Natural Gas, 320 U.S. at 603. Therefore, to the extent that the FCC can develop a model tied to reasonably accurate, normative costs that an efficient company can be expected to achieve, individual operators will seek review of their specific costs only in the most exceptional cases, where they are willing to open all of their books up to a complete cost review. Bowles v. Willingham, 321 U.S. 503, 518 (1944); In Re Permian Basin Area Rate Cases, 390 U.S. 747, 769 (1968).

In addition, the Coalition believes this method will be practical, easy to apply at the local level, and should remove incentives for the operator to create tiers that are designed to avoid or minimize rate regulation. It would work as follows:

1. Effective April, 1993, on an interim basis, the Commission would establish a rate per-channel, representing the reasonable rate for both basic and non-basic service. The Coalition anticipates that operators will claim that they are nonetheless entitled to charge whatever they desire, until a local jurisdiction is certified and then formally adopts a rate, which rate could only apply prospectively. Therefore, to ensure that subscribers receive the benefit from this interim relief without delay, certified communities should be authorized to adopt the FCC rates, pending a fuller local hearing if the operator objects and provides evidence that the rate is unjust. The franchising authority could require refunds of any amounts If

appropriate, above the benchmark rate actually collected by the operator pending a final rate decision.[14]

2. As part of the fuller hearing, the locality would consider whether the rate developed by the FCC "exceed[s] the rates that would be charged for the basic service tier if such cable system were subject to effective competition." CPCA § 623(b)(1), 106 Stat. at 1465. Based on that analysis, the community could either (1) adopt the FCC per-channel rate or (2) consider the costs of providing service in their community, and establish a different basic service rate no lower than the nominal cost of providing basic service.[15] This process satisfies the two-part statutory test for basic service rates, discussed above, because it ensures basic rates are (1) reasonable, and (2) no higher than competitive rates.

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[14] There is no constitutional requirement that a hearing be held before the rate is adopted, so long as the public and the operator have a later opportunity to be heard. Bowles, 321 U.S. 591. Likewise, the statute requires localities to adopt procedures that "provide a reasonable opportunity for the consideration of the views of interested parties," CPCA §623(a)(3)(C), 106 Stat. at 1464, but this will be satisfied by the suggested procedures for implementing initial rate regulation -- particularly because interested parties have the opportunity to comment on FCC benchmarks through this proceeding.

[15] Although not constitutionally necessary, as part of this hearing the franchising authority could also hear any complaint by the operator that the benchmark rate is unreasonably low. However, given the language of the federal statute at CPCA §623(b)(C)(ii), (iii) & (vii), 106 Stat. at 1466, the operator should be required to submit actual cost data showing both that (1) the price for basic service does not cover nominal costs; and (2) the overall system earnings, considering all prudent expenses and all revenue sources, is inadequate and the basic rate is confiscatory. House Conference Report at 63, 1992 U.S.C.C.A.N. at 1245.

3. The procedure also leads to a simple evaluation of complaints that non-basic rates are unreasonable. A subscriber or franchising authority would state a sufficient complaint that rates for non-basic service are "unreasonable" by showing either that (1) the per-channel rate for non-basic service exceeds the Commission-established benchmark; or (2) the combined per-channel rate for basic and non-basic exceeds the Commission-established benchmark. The burden would then fall on the operator to show that costs entitle it to the rate it seeks to charge, considering the revenues.[16]

4. At the same time as this interim methodology establishes the initial benchmark, the Commission would commence a rulemaking to establish normative costs for the cable industry. Normative costs would be then be used to determine total revenue requirement for reasonable basic and non-basic rates.

5. It may be possible to develop national average cost norms to derive rates for all cable systems, or for all cable systems of a certain type. In any event, it should be possible -- as shown below -- to develop industry cost norms so that only a few local community-specific factors are required to set reasonable rates in each community.[17] Once norms are

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[16] Considering the non-basic rate along and non-basic and expanded basic collectively is consistent with CPCA § 623 (c)(2)(C)-(D), 106 Stat. at 1468.

[17] For example, it may be necessary to consider actual costs associated with operator support for public, educational and governmental access. Likewise, the Commission might find it necessary to recognize actual programming costs in rates. It should be a fundamental goal, however, to establish norms that

established, appropriate rates for use of the cable system could be derived (on a per-channel or absolute basis), with the franchising authorities in a position to determine the reasonable basic rate applicable in their community, and to adjust the operator's basic rates as necessary, so that the basic rate is not higher than a competitive rate, given the services provided.

6. Communities would have the option of regulating rates based on actual (rather than normative) costs of service.

7. As was proposed with respect to review of non-basic rates established while the norms are being developed, complaints to the FCC about non-basic tiers need only show that (1) combined rates for non-basic and basic exceed the per-channel charge derived from the FCC formula, or (2) rates for non-basic exceed the per-channel charge derived from the FCC formula.

8. In addition, the Commission would use its statutory authority to prevent evasions to prohibit operators from distorting or misallocating the costs of their operations.[18] For example, the Commission should collect data on programming costs prior to the passage of the Cable Act amendments to detect cable operator efforts to justify higher rates through "sweetheart deals" with affiliated programmers.

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discourage operators from manipulating costs at the local level in a way that is likely to make detection of unreasonable expenses difficult.

[18] See CPCA § 623(h), 106 Stat. at 1470.

III. THE FCC'S PROPOSED IMPLEMENTATION OF THE RULES

A. Regulation of Cable Service Rates

1. Standards and Procedures for Identification of Cable Systems Subject to Effective Competition.

Summary of Coalition's Position

The FCC asks how to determine if a competing multichannel service is offered and/or subscribed to by sufficient numbers of people in the franchise area to potentially provide competition, in accordance with the provisions of the Act, CPCA § 623(l)(1), 106 Stat. at 1470. The FCC also asks what types of multichannel video services should be deemed to offer competition to the dominant cable operator in the franchise area. The FCC asks what type of programming should be deemed "comparable," and whether a service must offer a minimum amount of programming or channels in order to be viewed as a potential competitor to the cable operator.

The key question in determining whether there is effective competition is whether an alternative multichannel service forces the dominant cable operator to charge competitive rather than monopoly prices for its basic and non-basic services. The FCC should find that effective competition exists only where a subscriber who wants to receive the panoply of programming typically offered on a cable system, and in particular, on its basic and expanded basic tiers, actually can choose from at least two alternative providers. This interpretation gives effect to the congressional purpose of amending the definition of effective